

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Gustave BERGNES et al.)	Group Art Unit: 1624
U.S. Patent No.: 7,557,115)	Examiner: Tamthorn Ngo TRUONG
Issued: July 7, 2009)	
For: COMPOUNDS, COMPOSITIONS, AND METHODS)	Confirmation No.: 1850

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT - POST GRANT

The Office issued the subject U.S. Patent No. 7,557,115 (the '115 patent) with a patent term adjustment of 406 days. In accordance with 37 C.F.R. § 1.705(d), Patentee hereby applies for an additional patent term adjustment under 35 U.S.C. § 154(b) of 464 days, for a total patent term adjustment of 870 days.

Patentee has calculated the total patent term adjustment of 870 days based on the following facts:

The '115 patent is a national stage filing under 35 U.S.C. § 371 of international application number PCT/US03/30788, filed September 30, 2003, which claims the benefit of provisional U.S. Application No. 60/414,756, filed September 30, 2002. The '115 patent commenced the national stage under 35 U.S.C. § 371 on March 30, 2005,

i.e., 30 months from the priority date of the international application . The '115 patent fulfilled the requirements of 35 U.S.C. § 371 on November 14, 2005..

A restriction requirement was mailed on February 28, 2008, resulting in a PTO delay of 410 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A).

Patentee filed a response to the first Office Action on March 18, 2008, resulting in a Patentee delay of 0 days.

The first Office Action was mailed on June 11, 2008, resulting in a PTO delay of 0 days. Patentee filed a response to the first Office Action on September 15, 2008, resulting in a Patentee delay of 4 days.

A Notice of Allowance was mailed December 31, 2008, resulting in a PTO delay of 0 days. The issue fee was paid on March 27, 2009. The '115 patent issued July 7, 2009.

As noted above, the '115 patent commenced the national stage under 35 U.S.C. § 371 on March 30, 2005. In accordance with 35 U.S.C. § 1.54(b)(1)(B), the three year pendency date for determination of patent term adjustment is March 30, 2008, thereby creating a PTO delay of 464 days.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, Patentee submits it is entitled to a total patent term adjustment of 870 days. The total term includes the 410 days of PTO delay accrued beyond the 14 months between the date the '115 patent fulfilled the requirements of 35 U.S.C. § 371 and the mailing date of the restriction requirement plus

the 464 days due to exceeding the three year pendency period minus the 4 days of Patentee delay.


Patentee respectfully requests that the current patent term adjustment be reconsidered.

If there are any other fees due in connection with the filing of this Application, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: September 4, 2009

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